
OPINION

Using the ADA to abuse the legal system

By Chuck Poochigian

Over the last 15 years, the Americans with Disabilities Act has opened doors, quite literally, for disabled people across our country. While this landmark legislation has improved the lives of countless disabled Americans, in recent years it also has spawned a new breed of opportunistic litigants who profit from exploiting this law. Hundreds of San Diego area small businesses have experienced abuse of this law first hand.

Passed in 1990, the ADA helped ensure equal access to public and private facilities. In addition to calling for building standards to be user-friendly for disabled patrons, the federal law also allows individuals harmed by a violation to sue for monetary damages.

Three states, California, Hawaii and Florida, also allow an injured party to recover extra monetary sums, including attorneys' fees, punitive and other damages. Some argue that the fear of paying thousands of dollars for an ADA violation gives property owners an economic incentive to comply with special access laws.

Unfortunately, this laudable act's highly technical provisions and fear of lawsuits have created confusion and triggered unintended consequences. In order to meet standards established by ADA, property owners doing business in California must comply with thousands of requirements. Because of the complexity of the law, minor and inadvertent violations are inevitable, especially for small-business owners.

San Diego has been a hot spot in the state for ADA abuse, with litigious predators targeting area small businesses as they exploit the law. Knowing that many small businesses without the financial resources to fight lawsuits will often settle out of court, ADA abusers have perfected the art of extracting settlements in exchange for dropping costly legal cases. Many of these lawsuits are not pursued with the primary intent of rectifying a wrong but are filed solely in pursuit of money. In the end, the business pays the lawyer, the lawyer drops the suit, and the "problem" goes unfixed.

Late last year, a San Diego news crew chronicled the exploits of one attorney who was one of the most flagrant abusers of this law. Their investigation found that this

attorney had filed 340 ADA lawsuits in San Diego alone for such offenses as having a flush handle on the wrong side of the toilet, a door knob not up to code or bathroom stalls with no hand rails. The language in the lawsuits filed on behalf of a handicapped plaintiff was always the same – claiming emotional and physical damage, pain and suffering, and, of course, attorney's fees.

Local small businesses that were named as defendants in these lawsuits (used car lots, motels, family restaurants, etc.) said that some plaintiffs had never even visited their property. One plaintiff admitted to the news crew that he had not sustained physical injuries or even shopped at these establishments, though he did claim emotional injuries from allegedly using their bathrooms.

In December 2004, a federal judge declared another Southern California plaintiff who had filed over 400 claims a "vexatious litigant," and required him to notify his court before filing any other ADA claims. The judge noted that none of these lawsuits were ever fully litigated in court and found that, as in so many ADA abuse cases, the claims were nearly identical in the facts alleged and the damages requested. Unfortunately, many businesses targeted by litigious predators like these agree to five-or six-figure settlements to avoid costly and uncertain legal battles.

Last November, California voters approved a ballot measure to stop shakedown lawsuits while still protecting consumers. In that spirit, I have introduced legislation (SB 855) designed to curb vexatious ADA lawsuits in California. This legislation will require that property owners be notified of ADA violations and allow owners to fix them before a lawsuit is filed. The bill protects the right of an individual who suffers a physical injury to get medical bills paid, while limiting lawsuits for fees and punitive damages if property owners correct the problem. Businesses that choose not to fix ADA violations will remain vulnerable to lawsuits, while those who in good faith desire to correct the violation will be given the opportunity to do so.

Accommodating Californians with special needs is vital, though abuse of the current system has resulted in great distress to many family businesses in San Diego and across the state. Ironically, this law that was originally designed to open doors for the disabled has forced some business to close their doors altogether. The Americans with Disabilities Act should be about providing access, not a payday for shakedown artists.

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